

APPROVED

[2026] IEHC 572



THE HIGH COURT
JUDICIAL REVIEW

2026 1003 JR

IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN

K. (GEORGIA) (NON-REFOULEMENT)

APPLICANT

AND

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 7 August 2026

INTRODUCTION

1. This judgment is delivered in respect of a challenge to the validity of a deportation order. It is alleged that the decision-maker made a material error of fact in his consideration of the prohibition of *refoulement*.

STATUTORY SCHEME

2. Section 50(1) of the International Protection Act 2015 provides that a person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where in the opinion of the Minister:
 - (a) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
 - (b) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
3. The Minister is precluded from issuing a deportation order in respect of such a person. This is described as the prohibition of *refoulement*.
4. It follows that, before making a deportation order, the Minister must consider whether the proposed expulsion or return would contravene section 50. This function may be performed by an authorised official acting as the Minister's alter ego in accordance with the *Carltona* principle. In practice, the reasons for the section 50 determination are ordinarily recorded in a formal report prepared in conjunction with the making of the deportation order.
5. The *refoulement* consideration takes place at the conclusion of a statutory process involving several stages. The protection claim will have been examined at first instance by the International Protection Office ("IPO") and, if an appeal has been pursued, by the International Protection Appeals Tribunal ("IPAT"). The claimant's family and personal circumstances, including any humanitarian considerations, will also have been examined in the context of the decision whether to grant permission to remain under section 49 and, where applicable, the review of that decision under section 49(7).

6. The High Court (Humphreys J.) held in *M.N. (Malawi) v. Minister for Justice* [2019] IEHC 489 (at paragraph 29) that the *refoulement* consideration does not require a *de novo* reconsideration of the protection claim:

“[Section 50] does not require a *de novo* reconsideration of all matters at this stage of making the deportation order. The Minister can consider all of the relevant circumstances of the case. That is implicit, and by definition that must include the decisions or recommendations of the IPO and IPAT. It is open to the Minister to in effect adopt the reasoning and conclusions of a protection decision for the purposes of the deportation order, and indeed, this is normally implicit in the Minister’s decision-making. Furthermore, in particular, the outcome of the *refoulement* consideration can normally be determined by reference to the outcome of the protection claim, unless exceptional circumstances arise such as the application of the exclusion clause or anything distinctly new or additional presented such as to persuade the Minister otherwise [...]”

7. The factual context in *M.N. (Malawi)* was that the applicant had made no further submissions concerning *refoulement*. The present case concerns the different question of the Minister’s obligation where additional material has been submitted following the determination of the protection claim.
8. The interaction between the protection decisions and the *refoulement* consideration has been discussed more recently in *J.C.E. v. Minister for Justice and Equality* [2025] IEHC 183 (at paragraphs 26, 30 and 33). Phelan J. explained that a deportation order is made only following a process involving multiple occasions for substantive consideration of any identified protection needs. In considering *refoulement*, the Minister is entitled to rely upon the integrity of the earlier, unimpugned stages of the process, while applying the legal test appropriate to that stage, unless new and relevant material has been advanced which requires separate consideration.

9. In *J.C.E.*, a claimed risk of female genital mutilation had been considered and rejected by IPAT on credibility grounds. That decision had not been challenged, and nothing further concerning the alleged risk had been advanced in either the review under section 49(7) or the *refoulement* representations.
10. Phelan J. held that the Minister had been entitled to rely upon IPAT's rejection of the claim because no new material or information had been submitted which required separate consideration. The present case is distinguishable because material relating to the applicant's existing protection claim, which had not been before the decision-makers in that process, was submitted expressly for the purpose of the section 50 consideration.
11. The distinction between a *de novo* reconsideration of the protection claim and the consideration of new material or relevant representations is further illustrated by *Z.B. v. Minister for Justice* [2021] IEHC 588. There, Burns J. held that, although the Minister was not required to redetermine the international protection claim, regard had to be given to representations relevant to whether the earlier protection findings should be adopted for the purposes of section 50.
12. In summary, the Minister is entitled to rely upon and, where appropriate, adopt the earlier rejection of the protection claim without undertaking that assessment afresh. Where new and relevant material has been submitted, however, the Minister must consider that material before deciding whether to adopt the earlier protection findings.

PROCEDURAL HISTORY

13. The applicant entered the State on 6 March 2026 and applied for international protection on 9 March 2026. His claim was based on a fear of persecution by

reason of his political opinion. He maintained that, through his participation in anti-government protests in Georgia and his recording and posting of videos of those protests on social media, he had come to the adverse attention of the Georgian authorities and affiliated groups. He claimed that he had received threats from 2024 onwards, had been stabbed in October 2024 and had subsequently been subjected to police harassment. He also attributed a spontaneous pneumothorax diagnosed in December 2024 to exposure to gas used at the protests.

14. The applicant was interviewed pursuant to section 35 of the International Protection Act 2015 on 19 March 2026. The International Protection Office recommended on 27 March 2026 that he be given neither a refugee declaration nor a subsidiary protection declaration. The applicant was notified of that recommendation on 7 April 2026.
15. The International Protection Office accepted that the applicant had been involved in an altercation with a police officer outside his place of work on 17 January 2026 and had been released after agreeing to delete a video of the incident. It rejected, however, his wider account that he had been threatened, stabbed and subjected to police harassment because of his protest activities. The adverse credibility findings rested principally upon a lack of detail, inconsistencies in the account and the absence of supporting documentation. The report expressly noted that the applicant had provided no medical documentation in support of his claim.
16. The applicant appealed to the International Protection Appeals Tribunal. By decision dated 5 May 2026, IPAT affirmed the IPO's recommendation. IPAT accepted that the applicant had attended protests and associated activities, but

held that the photographs, screenshots and videos then before it did not demonstrate that he had been harassed by the police because of his role in those protests. IPAT accepted that the workplace altercation of 17 January 2026 had occurred but rejected the wider claim of politically motivated threats, assault and police harassment.

17. On 11 May 2026, six days after IPAT's decision, the applicant's solicitors furnished further material to the Minister for the purposes of both the review under section 49(7) and the section 50 consideration. The nature of this material is discussed under the next heading.
18. The consideration under section 50 was completed on 28 May 2026 and concluded that returning the applicant to Georgia would not contravene the prohibition of *refoulement* ("*the section 50 determination*"). A deportation order was made under section 51 on the same date and notified to the applicant under cover of a letter dated 2 June 2026.
19. The applicant was arrested on 8 July 2026 for the purpose of effecting his deportation. Leave to apply for judicial review was granted on 9 July 2026, together with an interim injunction restraining the applicant's deportation. The judicial review proceedings were expedited, and a hearing date was fixed for 31 July 2026. The injunction was subsequently continued until the substantive hearing.
20. The applicant applied for his release pursuant to section 5(7) of the Immigration Act 1999. By judgment delivered *ex tempore* on 22 July 2026, I directed the applicant's release, subject to stringent conditions intended to secure his continued availability to the immigration authorities, his cooperation with the removal process and his attendance at the substantive hearing: *K. (Detention*

Pending Deportation) v. Minister for Justice, Home Affairs and Migration
[2026] IEHC 514.

21. The judicial review proceedings were heard on the morning of 31 July 2026. Having regard to the urgency of the proceedings and the imminence of the proposed deportation date, I pronounced judgment orally that afternoon and outlined my reasons. I informed the parties at the time that a fuller statement of reasons would be provided in writing within one week. The present judgment sets out those reasons.

ADDITIONAL MATERIAL SUBMITTED TO THE MINISTER

22. On 11 May 2026, the applicant's solicitors submitted a number of items to the Minister. At least two categories of those items had not been before either protection body.
23. The first category consisted of medical records relating principally to a foot injury sustained in June 2022 and an admission to hospital in December 2024 with a spontaneous pneumothorax.
24. The medical records had not been considered by either the IPO or IPAT in the determination of the applicant's claim for international protection. The medical records were considered subsequently by a different officer from within the IPO in the context of the section 49(7) review. This was a distinct statutory exercise concerned with permission to remain.
25. The second category consisted of the video bearing the filename "VID-20260507-WA0005.mp4" (*"the new video"*). The Minister accepts that the new video had not previously been before either protection body.

26. With the agreement of the parties, I viewed the new video at the hearing on 31 July 2026. The video is brief and appears to show an injured man being carried by two other men, with a shoe removed from one foot and what appears to be blood on the exposed sock.
27. It is not possible to identify from the new video itself the date and location of the event depicted nor the cause of the injury. The applicant contends that he is the person being carried and that the video depicts an injury sustained at a political protest in 2022. This is so notwithstanding that the principal events relied upon in his account of targeted threats and harassment are described as having occurred from 2024 onwards.
28. The medical records and the new video will be referred to collectively in this judgment as “*the additional material*”. This neutral phrase is used deliberately to avoid pre-empting the principal dispute between the parties as to what the decision-maker meant by “*new information*”.

SECTION 50 REPORT (NON-REFOULEMENT)

29. The section 50 report sets out two lists of material under the heading “*Representations regarding refoulement*”. The first list comprises material submitted during the international protection process which, according to the report, had been considered by the IPO or IPAT.
30. The second list is introduced in the following terms:

“Further, the applicant submitted the following with regards to refoulement under section 49(9) and section 50 for consideration.”

31. The second list included the representations made by the applicant's legal representatives, the section 49 review form, country of origin information, videos, medical records and a text message.
32. The report stated that all relevant information presented by the applicant and his legal representatives had been "*carefully and fully considered here*".
33. The report set out its operative reasoning as follows:

"The applicant/applicant's legal representatives repeated the applicant's claims made during his International Protection consideration as to why he cannot be returned to Georgia. They have provided no new information beyond that which has already been considered by both the IPAT and the IPO. Whilst the applicant's account of events were found partly credible by the IPAT it was found that their experiences did not reach a level which would constitute persecution, inhumane or degrading treatment. Therefore no further consideration is required with regards to the applicant's International Protection claims and it is found that there are no barriers to the applicant's return to Georgia having regard to such."

34. The report proceeded on that basis to treat the applicant as a failed asylum seeker. It also referred separately to the consideration of the medical evidence under section 49(3)(b) and to country of origin information concerning Georgia. The report concluded that the applicant's return would not contravene section 50.

"NEW INFORMATION"

35. The judicial review proceedings centre on the meaning of the statement in the section 50 report that the applicant had provided "*no new information*". The report expressly listed the additional material but nevertheless stated that the applicant had provided "*no new information*" beyond that already considered by both protection bodies and that "*no further consideration*" of the protection claim was required.

36. The medical records and the video were new to the protection process because neither had been before the protection bodies. In order to resolve the judicial review proceedings, it is necessary to determine, from the language and structure of the report read as a whole, whether the decision-maker recognised the additional material as new but rejected its relevance or significance, or whether alternatively he proceeded on the mistaken premise that nothing new had actually been submitted.
37. If the medical records and video had been recognised as new to the protection process, it would have been necessary for the section 50 decision-maker to evaluate whether they bore upon the applicant's account before adopting the earlier protection findings. The report contains no such evaluation. It does not find, for example, that the medical records failed to support the asserted connection between the applicant's medical history and his political activities. Nor does the report address the fact that the video was said to depict an event in 2022, whereas the alleged targeted threats and harassment are said to have commenced in 2024. Instead, the report states that the applicant and his legal representatives had merely "*repeated*" the claims made during the protection process and had provided "*no new information*" beyond that already considered by the protection bodies.
38. The approach taken by the section 50 report is to be contrasted with that of the section 49(7) review. The latter identified the medical records and videos, summarised their contents and explained why they were regarded as carrying little probative value in the context of permission to remain. The section 50 report did not adopt that analysis or refer to it as explaining why the additional material could not affect the protection findings. Its reference to the

section 49(7) review was confined to the conclusion that the medical records did not establish a breach of Articles 3 or 8 of the European Convention on Human Rights. This is a different question from whether the additional material bore upon the protection claim.

39. Read in sequence, the section 50 report proceeds from the *premise* that the earlier claims had merely been repeated to the *conclusion* that there was nothing further to consider. It does not convey that the decision-maker recognised the additional material as new, assessed its relevance and rejected its significance.
40. Counsel for the Minister emphasised that the statement of grounds does not plead a challenge based on inadequate reasons. The applicant's case, however, is not that the section 50 determination was unreasoned. Rather, it is that the reasoning actually expressed confirms that the decision-maker mistakenly believed that the additional material had already been considered by the protection bodies. The absence of an evaluation of the additional material is relevant only to the interpretation of that reasoning.
41. Counsel for the Minister also relied upon the reference in section 50(3) to a "*change of circumstances*". The section 50 report did not reject the additional material as incapable of constituting a relevant change of circumstances. Its stated reason was that the applicant had provided "*no new information*" beyond that already considered by the protection bodies. The legality of the determination must be assessed by reference to the reasoning actually adopted.
42. I am satisfied that the section 50 determination proceeded upon the mistaken factual premise that nothing new had been submitted beyond that already considered by the protection bodies.

MATERIALITY OF THE FACTUAL ERROR

43. The general rule is that a failure to have regard to a relevant consideration constitutes a good ground for judicial review. There is, however, some suggestion in the case law that an immigration decision will not be set aside for failure to consider particular information or documents unless the omission satisfies an additional threshold of materiality. On this analysis, relevance alone is insufficient: the matter overlooked must also be capable of affecting the outcome of the decision-making process.
44. The precise threshold has been formulated in a number of different ways. In *A.M.C. (Mozambique) v. International Protection Appeals Tribunal* [2018] IEHC 133, the question was expressed as whether the unconsidered document was capable of influencing the immigration decision. Other judgments suggest that relief should be refused only where the court is satisfied beyond a reasonable doubt that consideration of the document could have made no difference to the outcome: *S.E. v. Minister for Justice and Equality* [2022] IEHC 138 (at paragraph 35) and *O.M. v. International Protection Appeals Tribunal* [2025] IEHC 51 (at paragraph 10).
45. As explained in my own judgment in *C. (Nigeria) (Unconsidered Documents) v. International Protection Appeals Tribunal* [2025] IEHC 606 (at paragraphs 41 to 47), the case law has pitched the threshold of materiality at a low level. Relief will be refused only where the immigration decision would undoubtedly have been the same had the matter overlooked been properly considered. Put otherwise, the threshold is satisfied if there is a reasonable prospect that consideration of the matter might have affected the outcome.

46. The introduction of a threshold of materiality requires the court to engage, to a limited extent, with the substance of the additional material. The court must examine the reasoning underlying the section 50 determination and consider whether that reasoning might have been affected had the additional material been evaluated. This does not permit the court to substitute its own assessment of the protection claim or to determine the weight which should ultimately be attached to the medical records or the new video. Those are matters for the section 50 decision-maker.
47. The medical records satisfy the threshold of relevance and materiality. The applicant had claimed during the protection process that exposure to gas used at political protests had affected his health and caused the spontaneous pneumothorax for which he was hospitalised. The IPO report expressly relied upon the absence of medical documentation as one of the factors weighing against his account. The medical records subsequently furnished to the Minister confirmed that the applicant had been admitted to hospital in December 2024 with a spontaneous pneumothorax and had undergone treatment involving the insertion of a pleural drain.
48. It is correct to say that the medical records do not attribute the pneumothorax to exposure to tear gas or another chemical agent. Nor do they record an admission to hospital immediately following a political protest. Those matters might justify the section 50 decision-maker in attaching limited weight to the records. They do not, however, render them irrelevant or incapable of affecting the decision whether to adopt the earlier protection findings. The records provide documentary confirmation of a medical condition which formed part of the

applicant's account, against the background that the absence of medical documentation had expressly been identified during the protection process.

49. The new video must be approached in the same way. It was submitted to the Minister on the basis that it depicted the applicant in an injured state following a political protest. The video does not itself establish the date and location of the political protest nor the cause of the injury. The medical records concerning a foot injury sustained in June 2022 attribute that injury to an incident involving a cart. These discrepancies might well justify the section 50 decision-maker in attaching little or no weight to the video. They do not, however, establish that the video is incapable of bearing upon the applicant's account. The applicant had claimed during the protection process that he had attended political protests over a number of years and had been injured at a rally. A video said to depict him being carried from such an event with an injured foot was capable of providing some support for that aspect of his account. It cannot be said that consideration of the video could undoubtedly have made no difference to the decision whether to adopt the earlier protection findings. The video satisfies the low threshold of relevance and materiality, notwithstanding the evident difficulties concerning its provenance and probative value.
50. The Minister also relies upon the manner in which the additional material was submitted, saying that it was drip-fed. The orderly presentation of documents is important, and a person making representations to an administrative decision-maker should identify the relevance of the documents relied upon. The section 50 report did not, however, reject the additional material because its relevance had been inadequately explained or because the manner of

presentation prevented a proper assessment. Nor does the report suggest that the sheer volume of the documents and videos inhibited the decision-maker.

51. In summary, it cannot be said that the section 50 determination would undoubtedly have been the same had the additional material been properly considered. There is a reasonable prospect that consideration of the additional material might have affected the decision whether to adopt the earlier protection findings. The factual error satisfies the threshold of materiality.

CONCLUSION AND FORM OF ORDER

52. The section 50 determination proceeded upon the mistaken factual premise that nothing new had been submitted beyond that already considered by the protection bodies. The medical records and the identified video had not previously been before those bodies. The decision-maker did not, therefore, address the separate questions whether the additional material was relevant to the protection claim and, if so, what significance or weight should be attached to it.
53. The factual error was material because there is a reasonable prospect that consideration of the additional material might have affected the decision whether to adopt the earlier protection findings.
54. It follows that the opinion required by section 50 was not lawfully formed. As compliance with section 50 is a statutory precondition to the making of a deportation order under section 51, the deportation order must accordingly be set aside.
55. An order of *certiorari* will be made quashing the deportation order. The matter will be remitted pursuant to Order 84, rule 27 of the Rules of the Superior Courts

for reconsideration in accordance with this judgment. It will be for a different decision-maker to determine whether the additional material is relevant to the protection claim and, if so, what significance or weight should be attached to it in deciding whether to adopt the earlier protection findings for the purpose of section 50.

56. Following the delivery of the oral ruling on 31 July 2026, the conditions imposed upon the applicant pursuant to section 5(7) of the Immigration Act 1999 were vacated. The proceedings stand adjourned to 7 October 2026 to address the precise terms of the remittal, the allocation of costs and any application for a certificate of appeal. The parties have liberty to apply.

Appearances

Conor Power SC and David Leonard for the applicant instructed by Conor Ó Briain Solicitors

John P. Gallagher for the respondent instructed by the Chief State Solicitor's Office